

103D CONGRESS
1ST SESSION

S. 247

To establish constitutional procedures for the imposition of the death penalty
for certain Federal offenses.

IN THE SENATE OF THE UNITED STATES

JANUARY 27 (legislative day, JANUARY 5), 1993

Mr. SPECTER introduced the following bill; which was read twice and referred
to the Committee on the Judiciary

A BILL

To establish constitutional procedures for the imposition of
the death penalty for certain Federal offenses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Death Penalty Act of
5 1993”.

6 **SEC. 2. DEATH PENALTY.**

7 (a) IN GENERAL.—Title 18, United States Code, is
8 amended by inserting after chapter 227 the following new
9 chapter:

1 **“CHAPTER 228—DEATH PENALTY PROCEDURES**

“Sec.

“3591. Sentence of death.

“3592. Factors to be considered in determining whether a sentence of death is justified.

“3593. Special hearing to determine whether a sentence of death is justified.

“3594. Imposition of a sentence of death.

“3595. Review of a sentence of death.

“3596. Implementation of a sentence of death.

“3597. Use of State facilities.

“3598. Appointment of counsel.

“3599. Collateral attack on judgment imposing sentence of death.

2 **“§ 3591. Sentence of death**

3 “A defendant who has been found guilty of—

4 “(1) an offense described in section 794 or sec-
5 tion 2381 of this title;

6 “(2) an offense described in section 1751(c) of
7 this title if the offense, as determined beyond a rea-
8 sonable doubt at a hearing under section 3593, con-
9 stitutes an attempt to murder the President of the
10 United States and results in bodily injury to the
11 President or comes dangerously close to causing the
12 death of the President; or

13 “(3) any other offense for which a sentence of
14 death is provided, if the defendant, as determined
15 beyond a reasonable doubt at a hearing under sec-
16 tion 3593 either—

17 “(A) intentionally killed the victim;

18 “(B) intentionally participated in an act,
19 contemplating that the life of a person would be
20 taken or intending that lethal force would be

1 used in connection with a person, other than
2 one of the participants in the offense, and the
3 victim died as a direct result of the act; or

4 “(C) acting with reckless disregard for
5 human life, engaged or substantially partici-
6 pated in conduct which the defendant knew
7 would create a grave risk of death to another
8 person or persons and death resulted from such
9 conduct,

10 shall be sentenced to death if, after consideration of the
11 factors set forth in section 3592 in the course of a hearing
12 held under section 3593, it is determined that imposition
13 of a sentence of death is justified, except that no person
14 may be sentenced to death who was less than 18 years
15 of age at the time of the offense.

16 **“§ 3592. Factors to be considered in determining**
17 **whether a sentence of death is justified**

18 “(a) MITIGATING FACTORS.—In determining wheth-
19 er a sentence of death is justified for any offense, the jury,
20 or if there is no jury, the court, shall consider each of
21 the following mitigating factors and determine which, if
22 any, exist:

23 “(1) MENTAL CAPACITY.—The defendant’s
24 mental capacity to appreciate the wrongfulness of
25 the defendant’s conduct or to conform the defend-

1 ant's conduct to the requirements of law was signifi-
2 cantly impaired, regardless of whether the capacity
3 was so impaired as to constitute a defense to the
4 charge.

5 “(2) DURESS.—The defendant was under un-
6 usual and substantial duress, regardless of whether
7 the duress was of such a degree as to constitute a
8 defense to the charge.

9 “(3) PARTICIPATION IN OFFENSE MINOR.—The
10 defendant is punishable as a principal (as defined in
11 section 2 of title 18 of the United States Code) in
12 the offense, which was committed by another, but
13 the defendant's participation was relatively minor,
14 regardless of whether the participation was so minor
15 as to constitute a defense to the charge.

16 The jury, or if there is no jury, the court, shall consider
17 whether any other aspect of the defendant's character or
18 record or any other circumstances of the offense that the
19 defendant may proffer as a mitigating factor exists.

20 “(b) AGGRAVATING FACTORS FOR ESPIONAGE AND
21 TREASON.—In determining whether a sentence of death
22 is justified for an offense described in section 3591(1), the
23 jury, or if there is no jury, the court, shall consider each
24 of the following aggravating factors and determine which,
25 if any, exist:

1 “(1) PREVIOUS ESPIONAGE OR TREASON CON-
2 VICTION.—The defendant has previously been con-
3 victed of another offense involving espionage or trea-
4 son for which a sentence of life imprisonment or
5 death was authorized by statute.

6 “(2) RISK OF SUBSTANTIAL DANGER TO NA-
7 TIONAL SECURITY.—In the commission of the of-
8 fense the defendant knowingly created a grave risk
9 to the national security.

10 “(3) RISK OF DEATH TO ANOTHER.—In the
11 commission of the offense the defendant knowingly
12 created a grave risk of death to another person.

13 The jury, or if there is no jury, the court, may consider
14 whether any other aggravating factor exists.

15 “(c) AGGRAVATING FACTORS FOR HOMICIDE AND
16 FOR ATTEMPTED MURDER OF THE PRESIDENT.—In de-
17 termining whether a sentence of death is justified for an
18 offense described in section 3591 (2) or (6), the jury, or
19 if there is no jury, the court, shall consider each of the
20 following aggravating factors and determine which, if any,
21 exist:

22 “(1) DEATH OCCURRED DURING COMMISSION
23 OF ANOTHER CRIME.—The death occurred during
24 the commission or attempted commission of, or dur-
25 ing the immediate flight from the commission of, an

1 offense under section 751 (prisoners in custody of
2 institution or officer), section 794 (gathering or de-
3 livering defense information to aid foreign govern-
4 ment), section 844(d) (transportation of explosives
5 in interstate commerce for certain purposes), section
6 844(f) (destruction of Government property by ex-
7 plosives), section 1118 (prisoners serving life term),
8 section 1201 (kidnapping), or section 2381 (treason)
9 of this title, section 1826 of title 28 (persons in cus-
10 tody as recalcitrant witnesses or hospitalized follow-
11 ing a finding of not guilty only by reason of insan-
12 ity), or section 902 (i) or (n) of the Federal Aviation
13 Act of 1958, as amended (49 U.S.C. 1472 (i) or (n)
14 (aircraft piracy)).

15 “(2) INVOLVEMENT OF FIREARM OR PREVIOUS
16 CONVICTION OF VIOLENT FELONY INVOLVING FIRE-
17 ARM.—The defendant—

18 “(A) during and in relation to the commis-
19 sion of the offense or in escaping apprehension
20 used or possessed a firearm as defined in sec-
21 tion 921 of this title; or

22 “(B) has previously been convicted of a
23 Federal or State offense punishable by a term
24 of imprisonment of more than one year, involv-
25 ing the use or attempted or threatened use of

1 a firearm, as defined in section 921 of this title,
2 against another person.

3 “(3) PREVIOUS CONVICTION OF OFFENSE FOR
4 WHICH A SENTENCE OF DEATH OR LIFE IMPRISON-
5 MENT WAS AUTHORIZED.—The defendant has pre-
6 viously been convicted of another Federal or State
7 offense resulting in the death of a person, for which
8 a sentence of life imprisonment or death was author-
9 ized by statute.

10 “(4) PREVIOUS CONVICTION OF OTHER SERI-
11 OUS OFFENSES.—The defendant has previously been
12 convicted of 2 or more Federal or State offenses,
13 each punishable by a term of imprisonment of more
14 than one year, committed on different occasions, in-
15 volving the importation, manufacture, or distribution
16 of a controlled substance (as defined in section 102
17 of the Controlled Substances Act (21 U.S.C. 802))
18 or the infliction of, or attempted infliction of, serious
19 bodily injury or death upon another person.

20 “(5) GRAVE RISK OF DEATH TO ADDITIONAL
21 PERSONS.—The defendant, in the commission of the
22 offense or in escaping apprehension, knowingly cre-
23 ated a grave risk of death to one or more persons
24 in addition to the victim of the offense.

1 “(6) HEINOUS, CRUEL, OR DEPRAVED MANNER
2 OF COMMISSION.—The defendant committed the of-
3 fense in an especially heinous, cruel, or depraved
4 manner in that it involved torture or serious physical
5 abuse to the victim.

6 “(7) PROCUREMENT OF OFFENSE BY PAY-
7 MENT.—The defendant procured the commission of
8 the offense by payment, or promise of payment, of
9 anything of pecuniary value.

10 “(8) COMMISSION OF THE OFFENSE FOR PECU-
11 NIARY GAIN.—The defendant committed the offense
12 as consideration for the receipt, or in the expectation
13 of the receipt, of anything of pecuniary value.

14 “(9) SUBSTANTIAL PLANNING AND
15 PREMEDITATION.—The defendant committed the of-
16 fense after substantial planning and premeditation.

17 “(10) VULNERABILITY OF VICTIM.—The victim
18 was particularly vulnerable due to old age, youth, or
19 infirmity.

20 “(11) TYPE OF VICTIM.—The defendant com-
21 mitted the offense against—

22 “(A) the President of the United States,
23 the President-elect, the Vice President, the Vice
24 President-elect, the Vice President-designate,
25 or, if there is no Vice President, the officer next

1 in order of succession to the office of the Presi-
2 dent of the United States, or any person who
3 is acting as President under the Constitution
4 and laws of the United States;

5 “(B) a chief of state, head of government,
6 or the political equivalent, of a foreign nation;

7 “(C) a foreign official listed in section
8 1116(b)(3)(A) of this title, if that official is in
9 the United States on official business; or

10 “(D) a public servant who is a Federal
11 judge, a Federal law enforcement officer, an
12 employee (including a volunteer or contract em-
13 ployee) of a Federal prison, or an official of the
14 Federal Bureau of Prisons—

15 “(i) while such public servant is en-
16 gaged in the performance of the public
17 servant’s official duties;

18 “(ii) because of the performance of
19 such public servant’s official duties; or

20 “(iii) because of such public servant’s
21 status as a public servant.

22 For purposes of this paragraph, the terms ‘Presi-
23 dent-elect’ and ‘Vice President-elect’ mean such per-
24 sons as are the apparent successful candidates for
25 the offices of President and Vice President, respec-

1 tively, as ascertained from the results of the general
2 elections held to determine the electors of President
3 and Vice President in accordance with title 3, United
4 States Code, sections 1 and 2; a ‘Federal law enforcement
5 officer’ is a public servant authorized by
6 law or by a government agency or Congress to conduct
7 or engage in the prevention, investigation, or
8 prosecution of an offense; ‘Federal prison’ means a
9 Federal correctional, detention, or penal facility,
10 Federal community treatment center, or Federal
11 halfway house, or any such prison operated under
12 contract with the Federal Government; and ‘Federal
13 judge’ means any judicial officer of the United
14 States, and includes a justice of the Supreme Court
15 and a magistrate.

16 The jury, or if there is no jury, the court, may consider
17 whether any other aggravating factor exists.

18 **“§ 3593. Special hearing to determine whether a sen-**
19 **tence of death is justified**

20 “(a) NOTICE BY THE GOVERNMENT.—Whenever the
21 Government intends to seek the death penalty for an offense
22 described in section 3591, the attorney for the Government,
23 a reasonable time before the trial, or before acceptance
24 by the court of a plea of guilty, or at such time
25 thereafter as the court may permit upon a showing of good

1 cause, shall sign and file with the court, and serve on the
2 defendant, a notice—

3 “(1) that the Government in the event of con-
4 viction will seek the sentence of death; and

5 “(2) setting forth the aggravating factor or fac-
6 tors enumerated in section 3592 and any other ag-
7 gravating factor not specifically enumerated in sec-
8 tion 3592, that the Government, if the defendant is
9 convicted, will seek to prove as the basis for the
10 death penalty.

11 The court may permit the attorney for the Government
12 to amend the notice upon a showing of good cause.

13 “(b) HEARING BEFORE A COURT OR JURY.—When
14 the attorney for the Government has filed a notice as re-
15 quired under subsection (a) of this section and the defend-
16 ant is found guilty of an offense described in section 3591
17 of this title, the judge who presided at the trial or before
18 whom the guilty plea was entered, or another judge if that
19 judge is unavailable, shall conduct a separate sentencing
20 hearing to determine the punishment to be imposed. Be-
21 fore such a hearing, no presentence report shall be pre-
22 pared by the United States Probation Service, notwith-
23 standing the Federal Rules of Criminal Procedure. The
24 hearing shall be conducted—

1 “(1) before the jury that determined the de-
2 fendant’s guilt;

3 “(2) before a jury impaneled for the purpose of
4 the hearing if—

5 “(A) the defendant was convicted upon a
6 plea of guilty;

7 “(B) the defendant was convicted after a
8 trial before the court sitting without a jury;

9 “(C) the jury that determined the defend-
10 ant’s guilt was discharged for good cause; or

11 “(D) after initial imposition of a sentence
12 under this section, reconsideration of the sen-
13 tence under the section is necessary; or

14 “(3) before the court alone, upon motion of the
15 defendant and with the approval of the attorney for
16 the Government.

17 A jury impaneled pursuant to paragraph (2) shall consist
18 of 12 members, unless, at any time before the conclusion
19 of the hearing, the parties stipulate, with the approval of
20 the court, that it shall consist of a lesser number.

21 “(c) PROOF OF MITIGATING AND AGGRAVATING FAC-
22 TORS.—At the hearing, information may be presented as
23 to—

1 “(1) any matter relating to any mitigating fac-
2 tor listed in section 3592 and any other mitigating
3 factor; and

4 “(2) any matter relating to any aggravating
5 factor listed in section 3592 for which notice has
6 been provided under subsection (a)(2) and (if infor-
7 mation is presented relating to such a listed factor)
8 any other aggravating factor for which notice has
9 been so provided.

10 Information presented may include the trial transcript and
11 exhibits. Any other information relevant to such mitigat-
12 ing or aggravating factors may be presented by either the
13 government or the defendant, regardless of its admissibil-
14 ity under the rules governing admission of evidence at
15 criminal trials, except that information may be excluded
16 if its probative value is outweighed by the danger of creat-
17 ing unfair prejudice, confusing the issues, or misleading
18 the jury. The attorney for the Government and for the
19 defendant shall be permitted to rebut any information re-
20 ceived at the hearing, and shall be given fair opportunity
21 to present argument as to the adequacy of the information
22 to establish the existence of any aggravating or mitigating
23 factor, and as to the appropriateness in that case of im-
24 posing a sentence of death. The attorney for the Govern-
25 ment shall open the argument. The defendant shall be per-

1 mitted to reply. The Government shall then be permitted
2 to reply in rebuttal. The burden of establishing the exist-
3 ence of an aggravating factor is on the Government, and
4 is not satisfied unless the existence of such a factor is es-
5 tablished beyond a reasonable doubt. The burden of estab-
6 lishing the existence of any mitigating factor is on the de-
7 fendant, and is not satisfied unless the existence of such
8 a factor is established by a preponderance of the evidence.

9 “(d) RETURN OF SPECIAL FINDINGS.—The jury, or
10 if there is no jury, the court, shall consider all the informa-
11 tion received during the hearing. It shall return special
12 findings identifying any aggravating factor or factors set
13 forth in section 3592 of this title found to exist and any
14 other aggravating factor for which notice has been pro-
15 vided under subsection (a) found to exist. A finding with
16 respect to a mitigating factor may be made by one or more
17 members of the jury, and any member of the jury who
18 finds the existence of a mitigating factor may consider
19 such factor established for purposes of this section regard-
20 less of the number of jurors who concur that the factor
21 has been established. A finding with respect to any aggra-
22 vating factor must be unanimous. If no aggravating factor
23 set forth in section 3592 of this title is found to exist,
24 the court shall impose a sentence other than death author-
25 ized by law.

1 “(e) RETURN OF A FINDING CONCERNING A SEN-
2 TENCE OF DEATH.—If, in the case of—

3 “(1) an offense described in section 3591(1) of
4 this title, an aggravating factor required to be con-
5 sidered under section 3592(b) of this title is found
6 to exist; or

7 “(2) an offense described in section 3591 (2) or
8 (6) of this title, an aggravating factor required to be
9 considered under section 3592(c) of this title is
10 found to exist;

11 the jury, or if there is no jury, the court, shall then con-
12 sider whether the aggravating factor or factors found to
13 exist outweigh any mitigating factor or factors. The jury,
14 or if there is no jury, the court, shall recommend a sen-
15 tence of death if it unanimously finds at least one aggra-
16 vating factor and no mitigating factor or if it finds one
17 or more aggravating factors which outweigh any mitigat-
18 ing factors. In any other case, it shall not recommend a
19 sentence of death. The jury shall be instructed that it
20 must avoid any influence of sympathy, sentiment, passion,
21 prejudice, or other arbitrary factors in its decision, and
22 should make such a recommendation as the information
23 warrants.

24 “(f) SPECIAL PRECAUTION TO ASSURE AGAINST
25 DISCRIMINATION.—In a hearing held before a jury, the

1 court, before the return of a finding under subsection (e)
2 of this section, shall instruct the jury that, in considering
3 whether a sentence of death is justified, it shall not con-
4 sider the race, color, religious beliefs, national origin, or
5 sex of the defendant or of any victim and that the jury
6 is not to recommend a sentence of death unless it has con-
7 cluded that it would recommend a sentence of death for
8 the crime in question no matter what the race, color, reli-
9 gious beliefs, national origin, or sex of the defendant or
10 of any victim may be. The jury, upon return of a finding
11 under subsection (e) of this section, shall also return to
12 the court a certificate, signed by each juror, that consider-
13 ation of the race, color, religious beliefs, national origin,
14 or sex of the defendant or any victim was not involved
15 in reaching the juror's individual decision and that the in-
16 dividual juror would have made the same recommendation
17 regarding a sentence for the crime in question no matter
18 what the race, color, religious beliefs, national origin, or
19 sex of the defendant or any victim may be.

20 **“§ 3594. Imposition of a sentence of death**

21 “Upon the recommendation under section 3593(e) of
22 this title that a sentence of death be imposed, the court
23 shall sentence the defendant to death. Otherwise the court
24 shall impose a sentence, other than death, authorized by
25 law. Notwithstanding any other provision of law, if the

1 maximum term of imprisonment for the offense is life im-
2 prisonment, the court may impose a sentence of life im-
3 prisonment without the possibility of release or furlough.

4 **“§ 3595. Review of a sentence of death**

5 “(a) APPEAL.—In a case in which a sentence of death
6 is imposed, the sentence shall be subject to review by the
7 court of appeals upon appeal by the defendant. Notice of
8 appeal of the sentence must be filed within the time speci-
9 fied for the filing of a notice of appeal of the judgment
10 of conviction. An appeal of the sentence under this section
11 may be consolidated with an appeal of the judgment of
12 conviction and shall have priority over all other cases.

13 “(b) REVIEW.—The court of appeals shall review the
14 entire record in the case, including—

15 “(1) the evidence submitted during the trial;

16 “(2) the information submitted during the sen-
17 tencing hearing;

18 “(3) the procedures employed in the sentencing
19 hearing; and

20 “(4) the special findings returned under section
21 3593(d) of this title.

22 “(c) DECISION AND DISPOSITION.—

23 “(1) If the court of appeals determines that—

1 “(A) the sentence of death was not im-
2 posed under the influence of passion, prejudice,
3 or any other arbitrary factor; and

4 “(B) the evidence and information support
5 the special findings of the existence of an ag-
6 gravating factor or factors;
7 it shall affirm the sentence.

8 “(2) In any other case, the court of appeals
9 shall remand the case for reconsideration under sec-
10 tion 3593 of this title or for imposition of another
11 authorized sentence as appropriate.

12 “(3) The court of appeals shall state in writing
13 the reasons for its disposition of an appeal of sen-
14 tence of death under this section.

15 **“§ 3596. Implementation of a sentence of death**

16 “(a) IN GENERAL.—A person who has been sen-
17 tenced to death pursuant to this chapter shall be commit-
18 ted to the custody of the Attorney General until exhaus-
19 tion of the procedures for appeal of the judgment of con-
20 viction and for review of the sentence. When the sentence
21 is to be implemented, the Attorney General shall release
22 the person sentenced to death to the custody of a United
23 States marshal, who shall supervise implementation of the
24 sentence in the manner prescribed by the law of the State
25 in which the sentence is imposed. If the law of such State

1 does not provide for implementation of a sentence of
2 death, the court shall designate another State, the law of
3 which does so provide, and the sentence shall be imple-
4 mented in the manner prescribed by such law.

5 “(b) IMPAIRED MENTAL CAPACITY, AGE, OR PREG-
6 NANCY.—A sentence of death shall not be carried out upon
7 a person who is under 18 years of age at the time the
8 crime was committed. A sentence of death shall not be
9 carried out upon a person who is mentally retarded. A sen-
10 tence of death shall not be carried out upon a person who,
11 as a result of mental disability—

12 “(1) cannot understand the nature of the pend-
13 ing proceedings, what such person was tried for, the
14 reason for the punishment, or the nature of the pun-
15 ishment; or

16 “(2) lacks the capacity to recognize or under-
17 stand facts which would make the punishment un-
18 just or unlawful or lacks the ability to convey such
19 information to counsel or to the court.

20 A sentence of death shall not be carried out upon a woman
21 while she is pregnant.

22 “(c) EMPLOYEES MAY DECLINE TO PARTICIPATE.—
23 No employee of any State department of corrections or
24 the Federal Bureau of Prisons and no employee providing
25 services to that department or bureau under contract shall

1 be required, as a condition of that employment or contrac-
 2 tual obligation, to be in attendance at or to participate
 3 in any execution carried out under this section, if such
 4 participation is contrary to the moral or religious convic-
 5 tions of the employee. For purposes of this subsection, the
 6 term ‘participate in any execution’ includes personal prep-
 7 aration of the condemned individual and the apparatus
 8 used for the execution, and supervision of the activities
 9 of other personnel in carrying out such activities.

10 **“§ 3597. Use of State facilities**

11 “A United States marshal charged with supervising
 12 the implementation of a sentence of death may use appro-
 13 priate State or local facilities for the purpose, may use
 14 the services of an appropriate State or local official or of
 15 a person such as an official employed for the purpose, and
 16 shall pay the costs thereof in an amount approved by the
 17 Attorney General.

18 **“§ 3598. Appointment of counsel**

19 “(a) FEDERAL CAPITAL CASES.—

20 “(1) REPRESENTATION OF INDIGENT DEFEND-
 21 ANTS.—Notwithstanding any other provision of law,
 22 this subsection shall govern the appointment of
 23 counsel for any defendant against whom a sentence
 24 of death is sought, or on whom a sentence of death
 25 has been imposed, for an offense against the United

1 States, where the defendant is or becomes financially
2 unable to obtain adequate representation. Such a de-
3 fendant shall be entitled to appointment of counsel
4 from the commencement of trial proceedings until
5 one of the conditions specified in section 3599(b) of
6 this title has occurred.

7 “(2) REPRESENTATION BEFORE FINALITY OF
8 JUDGMENT.—A defendant within the scope of this
9 subsection shall have counsel appointed for trial rep-
10 resentation as provided in section 3005 of this title.
11 At least one counsel so appointed shall continue to
12 represent the defendant until the conclusion of direct
13 review of the judgment, unless replaced by the court
14 with other qualified counsel.

15 “(3) REPRESENTATION AFTER FINALITY OF
16 JUDGMENT.—When a judgment imposing a sentence
17 of death has become final through affirmance by the
18 Supreme Court on direct review, denial of certiorari
19 by the Supreme Court on direct review, or expiration
20 of the time for seeking direct review in the court of
21 appeals or the Supreme Court, the Government shall
22 promptly notify the district court that imposed the
23 sentence. Within 10 days of receipt of such notice,
24 the district court shall proceed to make a determina-
25 tion whether the defendant is eligible under this sub-

1 section for appointment of counsel for subsequent
2 proceedings. On the basis of the determination, the
3 court shall issue an order (A) appointing one or
4 more counsel to represent the defendant upon a
5 finding that the defendant is financially unable to
6 obtain adequate representation and wishes to have
7 counsel appointed or is unable competently to decide
8 whether to accept or reject appointment of counsel;
9 (B) finding, after a hearing if necessary, that the
10 defendant rejected appointment of counsel and made
11 the decision with an understanding of its legal con-
12 sequences; or (C) denying the appointment of coun-
13 sel upon a finding that the defendant is financially
14 able to obtain adequate representation. Counsel ap-
15 pointed pursuant to this paragraph shall be different
16 from the counsel who represented the defendant at
17 trial and on direct review unless the defendant and
18 counsel request a continuation or renewal of the ear-
19 lier representation.

20 “(4) STANDARDS FOR COMPETENCE OF COUN-
21 SEL.—In relation to a defendant who is entitled to
22 appointment of counsel under this subsection, at
23 least one counsel appointed for trial representation
24 must have been admitted to the bar for at least 5
25 years and have at least 3 years of experience in the

1 trial of felony cases in the Federal district courts. If
2 new counsel is appointed after judgment, at least
3 one counsel so appointed must have been admitted
4 to the bar for at least 5 years and have at least 3
5 years of experience in the litigation of felony cases
6 in the Federal courts of appeals or the Supreme
7 Court. The court, for good cause, may appoint coun-
8 sel who does not meet these standards, but whose
9 background, knowledge, or experience would other-
10 wise enable him or her to properly represent the de-
11 fendant, with due consideration of the seriousness of
12 the penalty and the nature of the litigation.

13 “(5) APPLICABILITY OF CRIMINAL JUSTICE
14 ACT.—Except as otherwise provided in this sub-
15 section, the provisions of section 3006A of this title
16 shall apply to appointments under this subsection.

17 “(6) CLAIMS OF INEFFECTIVENESS OF COUN-
18 SEL.—The ineffectiveness or incompetence of coun-
19 sel during proceedings on a motion under section
20 2255 of title 28, United States Code, in a capital
21 case shall not be a ground for relief from the judg-
22 ment or sentence in any proceeding. This limitation
23 shall not preclude the appointment of different coun-
24 sel at any stage of the proceedings.

1 “(b) STATE CAPITAL CASES.—The laws of the Unit-
2 ed States shall not be construed to impose any require-
3 ment with respect to the appointment of counsel in any
4 proceeding in a State court or other State proceeding in
5 a capital case, other than any requirement imposed by the
6 Constitution of the United States. In a proceeding under
7 section 2254 of title 28, United States Code, relating to
8 a State capital case, or any subsequent proceeding on re-
9 view, appointment of counsel for a petitioner who is or
10 becomes financially unable to afford counsel shall be in
11 the discretion of the court, except as provided by a rule
12 promulgated by the Supreme Court pursuant to statutory
13 authority. Such appointment of counsel shall be governed
14 by the provisions of section 3006A of this title.

15 **“§ 3599. Collateral attack on judgment imposing sen-**
16 **tence of death**

17 “(a) TIME FOR MAKING SECTION 2255 MOTION.—
18 In a case in which a sentence of death has been imposed,
19 and the judgment has become final as described in section
20 3598(a)(3) of this title, a motion in the case under section
21 2255 of title 28, United States Code, must be filed within
22 90 days of the issuance of the order relating to appoint-
23 ment of counsel under section 3598(a)(3) of this title. The
24 court in which the motion is filed, for good cause shown,
25 may extend the time for filing for a period not exceeding

1 60 days. A motion described in this section shall have pri-
2 ority over all noncapital matters in the district court, and
3 in the court of appeals on review of the district court's
4 decision.

5 “(b) STAY OF EXECUTION.—The execution of a sen-
6 tence of death shall be stayed in the course of direct review
7 of the judgment and during the litigation of an initial mo-
8 tion in the case under section 2255 of title 28, United
9 States Code. The stay shall run continuously following im-
10 position of the sentence and shall expire if—

11 “(1) the defendant fails to file a motion under
12 section 2255 of title 28, United States Code, within
13 the time specified in subsection (a), or fails to make
14 a timely application for court of appeals review fol-
15 lowing the denial of such a motion by a district
16 court;

17 “(2) upon completion of district court and court
18 of appeals review under section 2255 of title 28,
19 United States Code, the motion under that section
20 is denied and (A) the time for filing a petition for
21 certiorari has expired and no petition has been filed;
22 (B) a timely petition for certiorari was filed and the
23 Supreme Court denied the petition; or (C) a timely
24 petition for certiorari was filed and upon consider-
25 ation of the case, the Supreme Court disposed of it

1 in a manner that left the capital sentence undis-
2 turbed; or

3 “(3) before a district court, in the presence of
4 counsel and after having been advised of the con-
5 sequences of his decision, the defendant waives the
6 right to file a motion under section 2255 of title 28,
7 United States Code.

8 “(c) FINALITY OF THE DECISION ON REVIEW.—If
9 one of the conditions specified in subsection (b) has oc-
10 curred, no court thereafter shall have the authority to
11 enter a stay of execution or grant relief in the case un-
12 less—

13 “(1) the basis for the stay and request for relief
14 is a claim not presented in earlier proceedings;

15 “(2) the failure to raise the claim is (A) the re-
16 sult of governmental action in violation of the Con-
17 stitution or laws of the United States; (B) the result
18 of the Supreme Court recognition of a new Federal
19 right that is retroactively applicable; or (C) based on
20 a factual predicate that could not have been discov-
21 ered through the exercise of reasonable diligence in
22 time to present the claim in earlier proceedings; and

23 “(3) the facts underlying the claim would be
24 sufficient, if proven, to undermine the court’s con-
25 fidence in the determination of guilt on the offense

1 or offenses for which the death penalty was im-
 2 posed.”.

3 (b) CLERICAL AMENDMENT.—The table of chapters
 4 at the beginning of part II of title 28, United States Code,
 5 is amended by inserting after the item relating to chapter
 6 227 the following new item:

“228. Death penalty procedures 3591”.

7 **SEC. 3. CONFORMING AMENDMENT RELATING TO DE-**
 8 **STRUCTION OF AIRCRAFT OR AIRCRAFT FA-**
 9 **CILITIES.**

10 Section 34 of title 18, United States Code, is amend-
 11 ed by striking the comma after “imprisonment for life”
 12 and all that follows and inserting a period.

13 **SEC. 4. CONFORMING AMENDMENT RELATING TO ESPIO-**
 14 **NAGE.**

15 Section 794(a) of title 18, United States Code, is
 16 amended by inserting before the period at the end the fol-
 17 lowing: “, except that the sentence of death shall not be
 18 imposed unless the jury or, if there is no jury, the court,
 19 further finds beyond a reasonable doubt at a hearing
 20 under section 3593 of this title that the offense directly
 21 concerned nuclear weaponry, military spacecraft and sat-
 22 ellites, early warning systems, or other means of defense
 23 or retaliation against large-scale attack; war plans; com-
 24 munications intelligence or cryptographic information;
 25 sources or methods of intelligence or counterintelligence

1 operations; or any other major weapons system or major
2 element of defense strategy”.

3 **SEC. 5. CONFORMING AMENDMENT RELATING TO TRANS-**
4 **PORTING EXPLOSIVES.**

5 Section 844(d) of title 18, United States Code, is
6 amended by striking “as provided in section 34 of this
7 title”.

8 **SEC. 6. CONFORMING AMENDMENT RELATING TO MALI-**
9 **CIOUS DESTRUCTION OF FEDERAL PROP-**
10 **ERTY BY EXPLOSIVES.**

11 Section 844(f) of title 18, United States Code, is
12 amended by striking “as provided in section 34 of this
13 title”.

14 **SEC. 7. CONFORMING AMENDMENT RELATING TO MALI-**
15 **CIOUS DESTRUCTION OF INTERSTATE PROP-**
16 **ERTY BY EXPLOSIVES.**

17 Section 844(i) of title 18, United States Code, is
18 amended by striking “as provided in section 34 of this
19 title”.

20 **SEC. 8. CONFORMING AMENDMENT RELATING TO MURDER.**

21 The second paragraph of section 1111(b) of title 18,
22 United States Code, is amended to read as follows:

23 “Whoever is guilty of murder in the first degree shall
24 be punished by death or by imprisonment for life;”.

1 **SEC. 9. CONFORMING AMENDMENT RELATING TO KILLING**
2 **OFFICIAL GUESTS OR INTERNATIONALLY**
3 **PROTECTED PERSONS.**

4 Section 1116(a) of title 18, United States Code, is
5 amended by striking “any such person who is found guilty
6 of murder in the first degree shall be sentenced to impris-
7 onment for life, and”.

8 **SEC. 10. MURDER BY FEDERAL PRISONER.**

9 (a) IN GENERAL.—Chapter 51 of title 18, United
10 States Code, is amended by adding at the end the follow-
11 ing:

12 **“§ 1118. Murder by a Federal prisoner**

13 “(a) Whoever, while confined in a Federal prison
14 under a sentence for a term of life imprisonment, murders
15 another shall be punished by death or by life imprisonment
16 without the possibility of release or furlough.

17 “(b) For the purposes of this section—

18 “(1) ‘Federal prison’ means any Federal correc-
19 tional, detention, or penal facility, Federal commu-
20 nity treatment center, or Federal halfway house, or
21 any such prison operated under contract with the
22 Federal Government;

23 “(2) ‘term of life imprisonment’ means a sen-
24 tence for the term of natural life, a sentence com-
25 muted to natural life, an indeterminate term of a

1 minimum of at least 15 years and a maximum of
 2 life, or an unexecuted sentence of death.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
 4 at the beginning of chapter 51 of title 18, United States
 5 Code, is amended by adding at the end the following:

“1118. Murder by a Federal prisoner.”.

6 **SEC. 11. DEATH PENALTY RELATING TO KIDNAPING.**

7 Section 1201(a) of title 18, United States Code, is
 8 amended by inserting “and, if the death of any person re-
 9 sults, shall be punished by death or life imprisonment”
 10 after “or for life” .

11 **SEC. 12. DEATH PENALTY RELATING TO HOSTAGE TAKING.**

12 Section 1203(a) of title 18, United States Code, is
 13 amended by inserting “and, if the death of any person re-
 14 sults, shall be punished by death or life imprisonment”
 15 after “or for life” .

16 **SEC. 13. CONFORMING AMENDMENT RELATING TO MAIL-**
 17 **ABILITY OF INJURIOUS ARTICLES.**

18 The last paragraph of section 1716 of title 18, United
 19 States Code, is amended by striking the comma after “im-
 20 prisonment for life” and all that follows and inserting a
 21 period.

22 **SEC. 14. CONFORMING AMENDMENT RELATING TO PRESI-**
 23 **DENTIAL ASSASSINATION.**

24 Subsection (c) of section 1751 of title 18, United
 25 States Code, is amended to read as follows:

1 “(c) Whoever attempts to murder or kidnap any indi-
 2 vidual designated in subsection (a) of this section shall be
 3 punished—

4 “(1) by imprisonment for any term of years or
 5 for life, or

6 “(2) by death or imprisonment for any term of
 7 years or for life, if the conduct constitutes an at-
 8 tempt to murder the President of the United States
 9 and results in bodily injury to the President or oth-
 10 erwise comes dangerously close to causing the death
 11 of the President.”.

12 **SEC. 15. CONFORMING AMENDMENT RELATING TO MUR-**
 13 **DER FOR HIRE.**

14 Section 1958(a) of title 18, United States Code, is
 15 amended by striking “and if death results, shall be subject
 16 to imprisonment for any term of years or for life, or shall
 17 be fined not more than \$50,000, or both” and inserting
 18 “and if death results, shall be punished by death or life
 19 imprisonment, or shall be fined under this title, or both”.

20 **SEC. 16. CONFORMING AMENDMENT RELATING TO VIO-**
 21 **LENT CRIMES IN AID OF RACKETEERING AC-**
 22 **TIVITY.**

23 Paragraph (1) of section 1959(a) of title 18, United
 24 States Code, is amended to read as follows:

1 “(1) for murder, by death or life imprisonment,
2 or a fine in accordance with this title, or both; and
3 for kidnapping, by imprisonment for any term of
4 years or for life, or a fine in accordance with this
5 title, or both;”.

6 **SEC. 17. CONFORMING AMENDMENT RELATING TO WRECK-**
7 **ING TRAINS.**

8 The second to the last paragraph of section 1992 of
9 title 18, United States Code, is amended by striking the
10 comma after “imprisonment for life” and all that follows
11 and inserting a period.

12 **SEC. 18. CONFORMING AMENDMENT RELATING TO BANK**
13 **ROBBERY.**

14 Section 2113(e) of title 18, United States Code, is
15 amended by striking “or punished by death if the verdict
16 of the jury shall so direct” and inserting “or if death re-
17 sults shall be punished by death or life imprisonment”.

18 **SEC. 19. CONFORMING AMENDMENT RELATING TO TER-**
19 **RORIST ACTS.**

20 Paragraph (1) of subsection 2331(a) of title 18 of
21 the United States Code is amended to read as follows:

22 “(1)(A) if the killing is a first degree murder
23 as defined in section 1111(a) of this title, be pun-
24 ished by death or imprisonment for any term of

1 years or for life, or be fined under this title, or both;
2 and

3 “(B) if the killing is a murder other than a first
4 degree murder as defined in section 1111(a) of this
5 title, be fined under this title or imprisoned for any
6 term of years or for life, or both so fined and so im-
7 prisoned;”.

8 **SEC. 20. CONFORMING AMENDMENT RELATING TO AIR-**
9 **CRAFT HIJACKING.**

10 Section 903 of the Federal Aviation Act of 1958 (49
11 U.S.C. APP. 1473), is amended by striking subsection (c).

12 **SEC. 21. APPLICATION TO UNIFORM CODE OF MILITARY**
13 **JUSTICE.**

14 Chapter 228 of title 18 of the United States Code,
15 as added by this Act, does not apply to prosecutions under
16 the Uniform Code of Military Justice (10 U.S.C. 801 et
17 seq.).

18 **SEC. 22. CONFORMING AMENDMENT RELATING TO GENO-**
19 **CIDE.**

20 Section 1091(b)(1) of title 18, United States Code,
21 is amended by striking “a fine of not more than
22 \$1,000,000 and imprisonment for life” and inserting in
23 lieu thereof “by death or imprisonment for life, or a fine
24 of not more than \$1,000,000, or both”.

1 **SEC. 23. CONFORMING AMENDMENT RELATING TO PRO-**
2 **TECTION OF COURT OFFICERS AND JURORS.**

3 Section 1503 of title 18, United States Code, is
4 amended—

5 (1) by striking “Whoever corruptly” and insert-
6 ing “(a) Whoever corruptly”;

7 (2) in subsection (a) (as so designated), by
8 striking “fined not more than \$5,000 or imprisoned
9 not more than five years, or both” and inserting
10 “punished as provided in subsection (b)”;

11 (3) by adding at the end the following:

12 “(b) The punishment for an offense under this sec-
13 tion is—

14 “(1) in the case of a killing, the punishment
15 provided in sections 1111 and 1112 of this title;

16 “(2) in the case of an attempted killing, impris-
17 onment for not more than 20 years; and

18 “(3) in any other case, imprisonment for not
19 more than 10 years.”.

20 **SEC. 24. CONFORMING AMENDMENT RELATING TO PROHI-**
21 **BITION OF RETALIATORY KILLINGS OF WIT-**
22 **NESSES, VICTIMS, AND INFORMANTS.**

23 Section 1513 of title 18, United States Code, is
24 amended—

25 (1) by redesignating subsections (a) and (b) as
26 subsections (b) and (c) respectively;

1 (2) by inserting before subsection (b) (as so re-
2 designated) the following:

3 “(a)(1) Whoever kills or attempts to kill another per-
4 son with intent to retaliate against any person for—

5 “(A) the attendance of a witness or party at an
6 official proceeding, or any testimony given or any
7 record, document, or other object produced by a wit-
8 ness in an official proceeding; or

9 “(B) any information relating to the commis-
10 sion or possible commission of a Federal offense or
11 a violation of conditions of probation, parole, or re-
12 lease pending judicial proceedings given by a person
13 to a law enforcement officer;

14 shall be punished as provided in paragraph (2).

15 “(2) The punishment for an offense under this sub-
16 section is—

17 “(A) in the case of a killing, the punishment
18 provided in sections 1111 and 1112 of this title; and

19 “(B) in the case of an attempt, imprisonment
20 for not more than 20 years.”.

21 **SEC. 25. APPLICATION TO DRUG KINGPINS.**

22 Title II of the Controlled Substances Act (21 U.S.C.
23 801 et seq.) is amended by inserting after section 408 the
24 following:

1 “DEATH PENALTY FOR DRUG KINGPINS

2 “SEC. 408A. (a) IN GENERAL.—A defendant who has
3 been found guilty of—

4 “(1) an offense referred to in section 408(c)(1)
5 (21 U.S.C. 848(c)(1)), committed as part of a con-
6 tinuing criminal enterprise offense under the condi-
7 tions described in subsection (b) of that section;

8 “(2) an offense referred to in section 408(c)(1)
9 (21 U.S.C. 848(c)(1)), committed as part of a con-
10 tinuing criminal enterprise offense under that sec-
11 tion, where the defendant is a principal adminis-
12 trator, organizer or leader of such an enterprise, and
13 the defendant, in order to obstruct the investigation
14 or prosecution of an enterprise or an offense in-
15 volved in the enterprise, attempts to kill or know-
16 ingly directs, advises, authorizes, or assists another
17 to attempt to kill any public officer, juror, witness,
18 or member of the family or household of such a per-
19 son; or

20 “(3) an offense constituting a felony violation of
21 this Act (21 U.S.C. 801 et seq.), the Controlled Sub-
22 stance Import and Export Act (21 U.S.C. 951 et
23 seq.), or the Maritime-Drug Law Enforcement Act
24 (46 U.S.C. App. 1901 et seq.), where the defendant,
25 intending to cause death or acting with reckless dis-

1 regard for human life, engaged in such a violation,
2 and the death of another person results in the
3 course of the violation or from the use of the con-
4 trolled substance involved in the violation,
5 shall be sentenced to death if, after consideration of the
6 procedures set forth in chapter 228 of title 18, United
7 States Code, and subject to the consideration of the addi-
8 tional aggravating factors set forth in subsection (b), it
9 is determined that imposition of a sentence of death is
10 justified.

11 “(b) ADDITIONAL AGGRAVATING FACTORS.—In addi-
12 tion to the aggravating factors set forth in section 3592
13 (c) of title 18, United States Code, the following aggravat-
14 ing factors shall be considered in determining whether a
15 sentence of death is justified for an offense under this sec-
16 tion:

17 “(1) DISTRIBUTION TO PERSONS UNDER TWEN-
18 TY-ONE.—The offense, or a continuing criminal en-
19 terprise of which the offense was a part, involved a
20 violation of section 405 of this Act which was com-
21 mitted directly by the defendant or for which the de-
22 fendant would be liable under section 2 of title 18,
23 United States Code.

24 “(2) DISTRIBUTION NEAR SCHOOLS.—The of-
25 fense, or a continuing criminal enterprise of which

1 the offense was a part, involved a violation of section
 2 405A of this Act which was committed directly by
 3 the defendant or for which the defendant would be
 4 liable under section 2 of title 18, United States
 5 Code.

6 “(3) USING MINORS IN TRAFFICKING.—The of-
 7 fense, or a continuing criminal enterprise of which
 8 the offense was a part, involved a violation of section
 9 405B of this Act which was committed directly by
 10 the defendant or for which the defendant would be
 11 liable under section 2 of title 18, United States
 12 Code.

13 “(4) LETHAL ADULTERANT.—The offense in-
 14 volved the importation, manufacture, or distribution
 15 of a controlled substance mixed with a potentially le-
 16 thal adulterant, and the defendant was aware of the
 17 presence of the adulterant.”.

○

S 247 IS——2

S 247 IS——3